

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Baxley

Mailed: April 20, 2004

Opposition No. **91152044**

MONSTER CABLE PRODUCTS, INC.

v.

JOEL BARRY SHAMITOFF

Andrew P. Baxley, Interlocutory Attorney:

On March 15, 2004, opposer filed an amended notice of opposition.

Inasmuch as an answer has been filed, opposer may amend its notice of opposition only with applicant's consent or by leave of the Board upon motion. See Fed. R. Civ. P. 15(a); TBMP Section 507.02. The Board notes that, despite the fact that the amended notice of opposition was filed after the close of discovery, opposer did not indicate that applicant has consented to the filing of an amended notice of opposition and that opposer did not concurrently file a motion for leave to amend its pleading with the amended notice of opposition.¹

¹ The Board notes in addition that a cursory review of the amended notice of opposition indicates that opposer seeks to plead eight additional registrations, seven of which the USPTO issued prior to the commencement of this proceeding. Opposer should have known about those registrations and included them in

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Accordingly, the amended notice of opposition is not properly before the Board and will receive no consideration. Opposer's notice of opposition remains opposer's operative pleading herein.

The Board deems the filing of opposer's amended notice of opposition to have tolled the running of all dates herein.² Trial dates are reset as follows:

Plaintiff's thirty-day testimony period to close: **6/18/04**

Defendant's thirty-day testimony period to close: **8/17/04**

Plaintiff's fifteen-day rebuttal period to close **10/1/04**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

its original notice of opposition. See *Long John Silver's, Inc. v. Lou Scharf Inc.*, 213 USPQ 263 (TTAB 1982).

² Accordingly, the motion to suspend that opposer filed on April 6, 2004 is moot.